

KPS CONSULTING
“Building an Access Bridge in Technology and Telecommunications”

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BY ELECTRONIC MAIL

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Ex Parte Letter
CC Dockets 02-33, 95-20, 98-10

Dear Ms. Matthey:

On March 3, 2003, several disability organizations came to the FCC to discuss access to broadband services by people with disabilities. At that time we discussed legal theories by which the Commission could include Section 255-like disability safeguards in its regulations governing wireline and cable broadband applications. During our meeting, we discussed statements contained in our comments to the Commission’s broadband proceedings which supported the Commission’s authority to establish these protections under its ancillary jurisdiction. Specifically, because Congress has expressed an overriding interest in both bringing the benefits of broadband services to all Americans and ensuring access by people with disabilities to our nation’s communications services, the Commission has sufficient authority to apply the disability mandates contained in Title II of the Act to the manufacture of broadband equipment and the delivery of broadband services under Title I.

There is a second way for the Commission to ensure that the needs of people with disabilities are met as it develops its broadband policies. Specifically, the universal service obligation, contained in section 1 of the Communications Act, mandates the Commission to “make available, so far as possible to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . .” 47 U.S.C. §151. We submit that under this obligation, the Commission has a statutory duty – or at least the statutory authority – to ensure disability access to broadband equipment and services.

For the past two decades, Congress has enacted numerous pieces of legislation to ensure that our nation's telecommunications are accessible by people with disabilities. Through passage of the Telecommunications for the Disabled Act of 1982, P.L. 97-410, codified at 47 U.S.C. §610, as amended, the Hearing Aid Compatibility Act of 1988, the Telecommunications Accessibility Enhancement Act, P.L. No. 100-542, codified at 40 U.S.C. §762, Title IV of the Americans with Disabilities Act, P.L. No. 101-336, codified at 47 U.S.C. §225, Section 255 of the Telecommunications Act, P.L. No. 104-104, codified at 47 U.S.C. §255 and Section 508 of the Rehabilitation Act, P.L. 105-220, Title IV, §508(b), codified at 29 U.S.C. §794(d), Congress has consistently mandated that individuals with disabilities be included in the benefits of modern telecommunications, so that they can fully participate in employment, education, recreation, and other aspects of everyday life. Throughout this string of legislative acts, Congress consistently has relied on the Communications Act's universal service doctrine.

In 1982, Congress enacted the very first law requiring telecommunications access. The Telecommunications for the Disabled Act did two things. First, it required that certain telephones designated as "essential" be hearing aid compatible. Second, it directed the Commission to amend its Computer II ruling in order to make specialized customer premises equipment – equipment used by people with disabilities to communicate by telephone – affordable for people with disabilities. The Computer II ruling prohibited the bell operating companies from providing new equipment through their regulated services. AT&T's local operating companies had been subsidizing the research and development of new telephone products with revenues that came in from their provision of these local telephone services. Through cross subsidization, the telephone companies were able to charge prices for equipment that were far lower than those charged by competitors. Computer II would require consumers to pay the full price of that equipment, regardless of its manufacturer.

The FCC's Computer II ruling presented a potential disaster for people with disabilities. Prior to the ruling, AT&T's local affiliates had been offsetting the high costs of developing and installing specialized equipment with telephone service revenues. Without these subsidies, people with disabilities would be forced to pay the full, and often exorbitant, prices for such equipment. In the 1982 Act, Congress remedied this by enacting a provision that allowed companies to continue subsidizing the costs of their specialized equipment through regulated service rates. Congress relied on the Communication Act's universal service obligation in creating its exception to the Computer II ruling:

Disabled persons who are unable to afford the full costs of [specialized] equipment will lose access to telephone service. This would disserve the statutory goal of universal service [and] deprive many individuals of the opportunity to have gainful employment . . . The costs of such lost access, including impairment of the quality of life for disabled Americans, far exceed the costs of maintaining

service that the current system allows telephone companies to include in their general revenue requirements. H. Rep. No. 888, 97th Congress, 2d Sess. at 3-4.

Six years later, Congress enacted the Hearing Aid Compatibility Act, further expanding the hearing aid compatibility obligations. This Act contained a finding that “to the fullest extent made possible by technology and medical science, hearing impaired persons should have equal access to the national telecommunications network.” P. L. 100-394 Sec 2(1). And again, Congress relied on the universal service mandate to achieve its goal. The House Report explained: “Our nation’s public policy goal is equal, universal telephone service for all Americans. This legislation endeavors to ensure that all hearing impaired persons will have complete access to the telephone network.” H. Rep 100-674, 100th Cong., 2d Sess (1988) at 3. The Committee concluded that “[u]niversal compatibility and equal access by the hearing impaired to the telephone network follow from the [universal service provision of the] Communications Act of 1934. . . Advances in technology have made communication possible and it is time that hearing impaired persons are include in ‘all the people’” Id. at 6.

Congress’s requirements for both federal relay services, as embodied by the Telecommunications Accessibility Enhancement Act (TAEA), and nationwide relay services, as embodied in Title IV of the Americans with Disabilities Act (ADA), also rested on its commitment to fulfill the universal service obligation. For example, in introducing the TAEA, Senator McCain referenced the Communications Act’s mandate for universal service when he emphasized the importance of ensuring a rapid, efficient nationwide telecommunications system available to all people of the United States. Noting the many technological advances to which people with disabilities still did not have access, McCain concluded that it is “the responsibility of the Federal Government to lead the way in seeing that the technology is utilized to the fullest extent possible.” Cong Rec. S3279 (March 29, 1988). Similarly, language in Title IV of the ADA itself incorporates the universal service mandate. Section 225((b)(1) states:

In order to carry out the purposes established under section 1, to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone systems of the Nation, the Commission shall ensure that interstate, and intrastate telecommunications relay services are available, to the extent possible . . .” (emphasis added)

Deliberations in Congress that took place on legislation for captioning decoder circuitry and closed captioning programming requirements also relied heavily on the universal service obligation. Indeed, the obligation itself refers to both wire and *radio* service, the latter covering television transmission services. The Senate Report accompanying the Decoder Circuitry Act (requiring captioning decoder chips to be manufactured in most television sets) states that the Act was intended to promote “the continued goal of ensuring that *all* Americans have access to and can enjoy the benefits of what is a public benefit – our Nation’s airwaves.” S. Rep. No. 393, 101st Congress., 2d Sess. at 6 (1990) (emphasis added). Although we are not aware of any specific reference to the universal service obligation in the captioning mandates contained in the

Telecommunications Act of 1996, this is likely because at the time, Congress decided to explicitly utilize that obligation to ensure telecommunications access in schools, libraries and rural areas.

That the Commission has both the authority and the obligation to utilize the universal service mandate to ensure disability access to broadband equipment and services is firmly established by the above laws and their legislative histories. As our nation moves to more advanced services, the failure to ensure access by people with disabilities would have the unintended consequence of leaving these communities behind and eliminating the independence, integrity, and other gains achieved by the above statutes. We urge that as the Commission moves forward in setting its broadband policies, it uphold the past two decades of Congressional efforts to ensure full access to our nation's communications systems.

Sincerely,

/s/

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